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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,895	10/18/2002	Eckart Karl Heinz Voss	294-205 PCT/US	2379
23869	7590	07/12/2005	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				BERKO, RETFORD O
ART UNIT		PAPER NUMBER		
		1618		

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/049,895	VOSS ET AL.	
	Examiner Retford Berko	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 February 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

**Acknowledgement:** The Amendment filed 2/17/05 is acknowledged.

### **Status of Claims**

Claims 1-24 are pending in the application.

#### **Withdrawal of Claim Rejections:**

- a. The claim rejections under 35 U.S.C. 103 (a) as set forth in the previous office action dated 09/15/04 are withdrawn in view of applicant's amendment and remarks.
- b. The claim rejections under 35 USC Sec 112 as set forth in the previous office action dated 09/15/04 are withdrawn in view of the amendment to claims.
- c. The rejection of claims under 35 U.S.C. 101 is withdrawn in view of the amendment to the claims.

#### **New Grounds of Rejection:**

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-24 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Jeffcoat et al (US 5, 871, 756) in view of Clark et al (US 4, 753, 747) further in view of Karlen et al (US 6, 004, 545).

Jeffcoat (Patent '756) discloses cosmetic composition (claim 1 at col 57, lin 59); said composition comprising thickner (abstract, col 11, lin 51, col 58, lin 46), hydrocarbon propellant (col 11, lin 47,col 12, lin 66, col 13, lin 13-35; col 49, lin 27 and col 53, example 39); surfactant (col 11, lin 46, lin 55) and having the composition stored in a glass container (col 38, lin 63).

Jeffcoat does not teach that the composition is stored in a plastic container and under pressure of at least 0.1-3 bar.

Clark (Patent '747) discloses a process for making cosmetic composition comprising hydrocarbons, e.g. isopentane and isobutene as propellant (col 5, lin 66); in aerosol formulation (abstract, col 5, lin 55; col 12, lin 58) in a valved container (col 15, lin 10); said composition under pressure of 80 psi (col 13, lin 65). According to Clark, the hydrocarbon in the composition allows the resulting mixture to be readily pumpable for dispensing from container (col 6, lin 10-20). Additionally, Clark discloses that the method of manufacture provided advantages in that it yields substantially stable and homogeneous dispersion and provides flexibility to the formulator (col 2, lin 45-60).

Karlen (Patent '545) discloses hair cleansing composition (claim 1 at col 14, lin 16) comprising hydrocarbon propellants (col 5, lin 60-65, continuing to col 6, lin 1-10, polymers as thickening agents (col 6, lin 46, col 8, lin 25-30 and surfactant (examples 6-8 at col 10).

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One of ordinary skill would have been motivated to make a cosmetic composition comprising thickner, hydrocarbon propellant, surfactant and water as disclosed similar to that disclosed by Jeffcoat. As suggested by Clark, by employing the method of manufacture disclosed by Clark, one of ordinary skill in the art would expect to obtain a cosmetic composition that is stable and homogeneous (col 2, lin 45-60) and is readily pumpable for dispensing the product from the container (col 6, lin 10-20) from the container. More importantly, as disclosed by Clark, one of ordinary skill would have a motivation to combine the methods in the prior art cited because one of ordinary skill would expect to take advantage of the characteristics of the process disclosed wherein the process can be carried out in the presence of the ingredients normally found in personal care products such as shampoo, hair grooming and shave cream compositions (Patent '747, col 2, lin 49; col 5, lin 18-25, col).

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Retford Berko** whose telephone number is 571-272-0590. The examiner can normally be reached on M-F from 8.00 am to 5.30 pm  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K Page**, can be reached on 571-272-0602.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Neil S. Levy  
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PRIMARY EXAMINER